



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160411325-6535-02]

RIN 0648-XE568

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement annual management measures and harvest specifications to establish the allowable catch levels (i.e. annual catch limit (ACL)/harvest guideline (HG)) for the northern subpopulation of Pacific sardine (hereafter, simply Pacific sardine), in the U.S. Exclusive Economic Zone (EEZ) off the Pacific coast for the fishing season of July 1, 2016, through June 30, 2017. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This action includes a prohibition on directed non-tribal Pacific sardine commercial fishing for Pacific sardine off the coasts of Washington, Oregon and California, which is required because the estimated 2016 biomass of Pacific sardine is below the biomass threshold specified in the HG control rule. Under this action, Pacific sardine may still be harvested as part of either the live bait or tribal fishery

or as incidental catch in other fisheries; the incidental harvest of Pacific sardine would initially be limited to 40-percent by weight of all fish per trip when caught with other CPS or up to 2 metric tons (mt) when caught with non-CPS. The annual catch limit (ACL) for the 2016-2017 Pacific sardine fishing year is 8,000 mt. This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective July 1, 2016, through June 30, 2017

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034, *joshua.lindsay@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the CPS FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (i.e. overfishing limit (OFL)/ACL/HG) for each Pacific sardine fishing year. The purpose of this final rule is to implement these annual catch reference points for the 2016-2017 fishing year. This final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 26, 2016 (81 FR 33454), including an OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast.

The FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which, in conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and

Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principal commercial fishery is determined using the FMP-specified HG formula. The HG formula in the CPS FMP is $HG = [(Biomass - CUTOFF) * FRACTION * DISTRIBUTION]$ with the parameters described as follows:

1. *Biomass*. The estimated stock biomass of Pacific sardine age one and above. For the 2016-2017 management season this is 106,137 mt.
2. *CUTOFF*. This is the biomass level below which no HG is set. The FMP established this level at 150,000 mt.
3. *DISTRIBUTION*. The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast. The FMP established this at 87 percent.
4. *FRACTION*. The temperature-varying harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

As described above, the Pacific sardine HG control rule, the primary mechanism for setting the annual directed commercial fishery quota, includes a CUTOFF parameter which has been set as a biomass level of 150,000 mt. This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Therefore, because this year's biomass estimate is below that value, the formula results in an HG of zero and therefore no Pacific sardine are available for the commercial directed fishery during the 2016-2017 fishing season.

At the April 2016 Council meeting, the Council's SSC approved, and the Council adopted, the "Assessment of the Pacific Sardine Resource in 2016 for U.S.A. Management in 2016-2017", completed by NMFS Southwest Fisheries Science Center and the resulting Pacific sardine biomass estimate of 106,137 mt as the best available

science for setting harvest specifications. Based on recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is implementing, an OFL of 23,085 mt, an ABC of 19,236 mt, and a prohibition on sardine catch unless it is harvested as part of either the live bait or tribal fishery or incidental to other fisheries for the 2016-2017 Pacific sardine fishing year. As additional management measures, the Council also recommended, and NMFS is implementing, an ACL of 8,000 mt and specifying that the incidental catch of Pacific sardine in other CPS fisheries be managed with the following automatic inseason actions to reduce the potential for both targeting and discard of Pacific sardine:

- An incidental allowance of 40 percent Pacific sardine per landing by weight in non-treaty CPS fisheries until a total of 2,000 mt of Pacific sardine are landed.
- When 2,000 mt are landed, the incidental per-landing allowance would be reduced to 30 percent until a total of 5,000 mt of Pacific sardine have been landed.
- When 5,000 mt have been landed, the incidental per-landing allowance would be reduced to 10 percent for the remainder of the 2016-2017 fishing year.

Because Pacific sardine is known to come along with other CPS stocks, these incidental allowances allow for the continued prosecution of these other important CPS fisheries and reduce the potential discard of sardine. Additionally, non-CPS fisheries are allowed to retain up to 2 mt per landing of sardine harvested incidentally.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of attainment of any of the incidental catch levels described above and subsequent changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS

will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

As explained in the proposed rule, 800 mt of the ACL are being set aside for tribal harvest use per a request from the Quinault Indian Nation.

Detailed information on the fishery and the stock assessment are found in the report “Assessment of the Pacific Sardine Resource in 2016 for U.S.A. Management in 2016-2017” (see **FOR FURTHER INFORMATION CONTACT**).

Comment and Response

On May 26, 2016, NMFS published a proposed rule for this action and solicited public comments (81 FR 33454), with a public comment period that ended on June 10, 2016. NMFS received one comment letter—explained below—during the comment period. After consideration of the public comment, no changes were made from the proposed rule. For further background information on this action please refer to the preamble of the proposed rule. NMFS summarizes and responds below to the comment letter below.

Comment: The commenter expressed support for the prohibition on directed commercial sardine fishing, but is opposed to the proposed ACL level, and requested that NMFS instead set an ACL of no more than 1,000 mt to be divided among the live bait and tribal sectors, and to accommodate limited bycatch. The commenter expressed an opinion that the proposed ACL of 8,000 mt fails to follow the harvest control rule because the FMP states that the harvest rate should be zero when the biomass drops below the CUTOFF.

The comment also requested reconsideration of the sardine harvest control rule and other aspects of sardine management, including but not limited to the existing CUTOFF and Minimum Stock Size Threshold values. (These parameters, as well as other changes to the sardine harvest control rule and management mentioned by the commenter are beyond the scope of this rulemaking and will not be addressed below.)

Response: First, NMFS notes that the stock assessment for the 2016-2017 fishing year, as with each annual stock assessment, went through a multi-stage review process including being reviewed and discussed by the Council, and the Council's SSC, CPS management team, and CPS advisory subpanel to ensure that the best available science is utilized when calculating the biomass estimate. This year's biomass estimate used for the 2016-2017 specifications, along with the resulting OFL and ABC, was endorsed by the Council's SSC and NMFS as the best available science. Although this biomass estimate is still below the CUTOFF value, triggering the second year of the closure of the primary directed fishery, the estimate is slightly higher than last year's estimate.

NMFS disagrees that the ACL implemented in this rule is not in line with the FMP or that it fails to prevent overfishing or will "contribute to the continued decline of the sardine population to an overfished condition". The ACL should be viewed in the context of the OFL for the northern subpopulation of Pacific Sardine of 23,085 mt and an ABC of 19,236 mt that takes into account scientific uncertainty surrounding the OFL. These reference limits were recommended by the Council based on the control rules in the FMP and were endorsed the Council's SSC. The commenter does not note disagreement with these levels. By definition, fishing could conceivably occur up to these levels and overfishing would not be occurring and therefore fishing would not be the

cause of the stock moving towards an overfished state. An ACL of 8,000 mt is well below both the OFL and ABC, under which incidental catch of sardine will be managed, along with the multiple safeguards in place to keep the catch under that level, the management measures implemented by this rule are more than adequate to prevent exceeding the OFL.

In response to the commenter's opinion that overall harvest rate should be zero when the biomass drops below the 150,000 mt CUTOFF, NMFS notes that the FMP does not forbid incidental, live bait or tribal harvest in this situation. The reference provided by the commenter to of a harvest rate of zero is specific to the primary directed fishery; as explained above, this action sets the directed harvest rate at zero. Although the commenter states that the harvest rate in this situation should be zero, the commenter nevertheless also seems to agree that the FMP allows incidental, live bait, or tribal harvest if the directed harvest is set at zero. The commenter specifically cites the CPS FMP language that allows for live bait harvest when the estimated biomass drops below the CUTOFF. Additionally, although the commenter disagrees with setting the ACL at 8,000 mt because it would allow a harvest rate above zero percent (which the commenter argues would violate the FMP), the commenter supports an ACL of 1,000 mt (implying that the commenter recognizes that the FMP allows a harvest rate above zero percent).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the establishment of these final harvest specifications for the 2016-2017 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2016, the contents of which were based on the best available new information on the population status of Pacific sardine that became available at that time. Making these final specifications effective on July 1 is necessary for the conservation and management of the Pacific sardine resource. The FMP requires a prohibition on directed fishing for Pacific sardine for the 2016-2017 fishing year because the sardine biomass is below the CUTOFF. The purpose of the CUTOFF in the FMP—and prohibiting directed fishing when the biomass drops below this level—is to protect the stock when biomass is low and provide a buffer of spawning stock that is protected from fishing and available for use in rebuilding the stock. A delay in the effectiveness of this rule for a full 30 days would not allow the implementation of this prohibition prior to the expiration of the closure of the directed fishery on July 1, 2016, which was imposed under the 2015-2016 annual specifications.

Delaying the effective date of this rule beyond July 1 would be contrary to the public interest because reducing Pacific sardine biomass beyond the limits set out in this action could decrease the sustainability of the Pacific sardine, as well as cause future harvest limits to be even lower under the harvest control rule, thereby reducing future profits of the fishery.

These final specifications are exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed

rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2016-14955 Filed: 6/23/2016 8:45 am; Publication Date: 6/24/2016]